

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ROBERT L. SMITH, JR.)
)
)
v.) NO. 3:05-0860
) JUDGE CAMPBELL
CAPTAIN K. BAUGH, et al.)

ORDER

Pending before the Court is a Report and Recommendation (Docket No. 58) filed by the Magistrate Judge. The Report and Recommendation recommends that Defendants' Motion to Dismiss (Docket No. 39) be GRANTED in part and DENIED in part. Defendants' have filed Objections (Docket No. 61) to the Report and Recommendation.

The Court has independently reviewed the Magistrate Judge's findings and conclusions and has made a de novo determination on the pending matters. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b).

The Report and Recommendation (Docket No. 58) is accepted. Defendants' Motion to Dismiss (Docket No. 39) is GRANTED with respect to the Plaintiff's claim that Defendants Busbee, Troup and Baugh removed him or took acts to facilitate his removal from his prison job. This claim is dismissed, without prejudice, because it has not been exhausted. Defendants' Motion to Dismiss (Docket No. 39) is otherwise DENIED for the reasons stated in the Report and Recommendation (Docket No. 58).

Nothing herein shall preclude the Court from revisiting the "total exhaustion" issue, if necessary, upon any decision by the Supreme Court in Jones v. Bock, 126 S.Ct. 1462 (2006) and Williams v. Overton, 126 S.Ct. 1463 (2006), currently set for argument on October 30, 2006.

IT IS SO ORDERED.



TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE